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**In the District Court of the United States
for the District of Delaware.**

THE UNITED STATES OF AMERICA

v.

E. I. DU PONT DE NEMOURS & COMPANY AND OTHERS.

SUPPLEMENTAL REPORT.

WASHINGTON : GOVERNMENT PRINTING OFFICE : 1913

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**In the District Court of the United States
for the District of Delaware.**

IN EQUITY. No. 280.

THE UNITED STATES OF AMERICA

v.

E. I. DU PONT DE NEMOURS & COMPANY AND OTHERS.

To the honorable the judges of the said court:

The E. I. du Pont de Nemours Powder Company, for itself and on behalf of all the defendants, who are required to make report to the court for its approval of the manner in which the plan, contained in the final decree of June 13, 1912, was carried out, makes and files this further additional and supplemental report to the report filed January 15, 1913, and supplemental report filed February 14, 1913, showing compliance with the final decree of June 13, 1912, viz:

direct
We submit for approval that section 5 of article 5 of the indenture of the Hercules Powder Company (definition of "net earnings"), found on page 25 of defendants' additional and supplemental report, be amended to read as follows:

SECTION 5. The net earnings of the Powder Company for each calendar year, commencing with the calendar year beginning January 1,

1913, shall be ascertained by deducting from the sum of the gross earnings and income from all sources of the Powder Company for such calendar year: First, all expenses and losses of operating plants and works, including repairs to and maintenance of plants and losses due to explosions and fires; second, all selling expenses in such calendar year; third, reasonable allowances set aside for depreciation of its plants and equipment; fourth, all sums reserved or paid for taxes or assessments or governmental charges for such calendar year; and fifth, all sums paid or reserved for interest on moneys borrowed by the Powder Company during such calendar year, or renewals or extensions of loans made to it in the preceding year or years.

We submit for approval that section 5 of article 5 of the Indenture of the Atlas Powder Company (definition of "net earnings"), found on page 26 of defendants' additional and supplemental report, be amended to read as follows:

SECTION 5. The net earnings of the Powder Company for each calendar year, commencing with the calendar year beginning January 1, 1913, shall be ascertained by deducting from the sum of the gross earnings and income from all sources of the Powder Company for such calendar year: First, all expenses and losses of operating plants and works, including repairs to and maintenance of plants and losses due to explosions and fires; second, all selling expenses in such calendar year; third, reasonable allowances set aside for depreciation of its

plants and equipment; fourth, all sums reserved or paid for taxes or assessments or governmental charges for such calendar year; and fifth, all sums paid or reserved for interest on moneys borrowed by the Powder Company during such calendar year, or renewals or extensions of loans made to it in the preceding year or years.

We submit for approval that paragraph 2 of Exhibit E, contract between the du Pont Company and the Hercules Powder Company, covering use of such organization as the du Pont Company may operate or possess in reference to experimentation, development of the art, and scientific research, by the Hercules Powder Company, found on pages 80 and 81 of defendants' compliance report, filed January 15, 1913, be amended so as to read as follows:

2. At the close of each calendar year during the life of this contract, beginning with the year 1913, the expenses of such facilities distributed as aforesaid to dynamite, B. blasting powder, black sporting powder, and smokeless sporting powder, which commodities constitute the business of the Hercules Company, shall be borne and paid by the companies utilizing said facilities and organization and dealing in said commodities during such year. The amount of the Hercules Company's proportion of such expenses in each year shall be determined in the manner following:

At the close of each year during the life of this contract, the gross output of the plants of the Hercules Company in each of the commodi-

ties aforesaid during such year shall be ascertained by a report signed by the president of said company, and the gross output of said commodities by the plants of the du Pont Company and other companies respectively using such facilities and organization during such year shall be ascertained in the same manner, and the percentage that the total gross output of the Hercules Powder Company in each of the commodities aforesaid is of the total gross output in the same commodities of all the plants using such facilities and organization shall be the percentage of the total expenses distributable to each commodity that shall be borne and paid by Hercules Company for such year.

We submit for approval that paragraph 2 of Exhibit F, contract between the Du Pont Company and the Atlas Powder Company, covering use of such organization as the Du Pont Company may operate or possess in reference to experimentation, development of the art, and scientific research by the Atlas Powder Company, found on pages 95 and 96 of defendants' compliance report, filed January 15, 1913, be amended so as to read as follows:

2. At the close of each calendar year during the life of this contract, beginning with the year 1913, the expenses of such facilities distributed as aforesaid to dynamite and B. blasting powder, which commodities constitute the business of the Atlas Company, shall be borne and paid by the companies utilizing said facilities and organization and dealing

in said commodities during such year. The amount of the Atlas Company's proportion of such expenses in each year shall be determined in the manner following:

"At the close of each year, during the life of this contract, the gross output of the plants of the Atlas Company in each of the commodities aforesaid during such year, shall be ascertained by a report signed by the president of said company, and the gross output of said commodities by the plants of the Du Pont Company and other companies respectively using such facilities and organization during such year shall be ascertained in the same manner, and the percentage that the total gross output of the Atlas Powder Company in each of the commodities aforesaid is of the total gross output in the same commodities of all the plants using such facilities and organization shall be the percentage of the total expenses distributable to each commodity that shall be borne and paid by Atlas Company for such year."

We submit that Exhibit E, proposed agreement between the Du Pont Powder Company and the Hercules Powder Company, found on page 81 of defendants' compliance report, filed January 15, 1913, covering use by the Hercules Company of the trade bureau maintained by the Du Pont Company, be amended so as to read as follows:

EXHIBIT E.

This agreement, made this ——— day of January, 1913, between E. I. du Pont de Nemours Powder Company, a corporation

created under the laws of New Jersey, hereinafter called the "du Pont Company", and Hercules Powder Company, a corporation created under the laws of Delaware, hereinafter called the "Hercules Company"; witnesseth:

Whereas, the Hercules Company has been created pursuant to decree of the District Court of the United States, for the District of Delaware, entered in that certain suit in equity No. 280, in which United States of America is petitioner, and E. I. du Pont de Nemours & Company and others, are defendants, in which decree it is provided that the du Pont Company shall during a period of at least five years furnish the Hercules Company, under such arrangement as may be reasonable, such information from the records of the trade bureau, including the statistical division, maintained by the du Pont Company, as may be desired; and,

Whereas, the du Pont Company and the Hercules Company have agreed that the information which the trade bureau, including the statistical division, maintained by the du Pont Company shall furnish to the Hercules Powder Company, under this provision of the decree, shall be confined to the information and statistics found in said trade bureau, including the statistical division, as of December 31, 1912, and that any statistics or information accumulated in said bureau by the du Pont Company, after December 31, 1912, shall not be available to the Hercules Company.

Therefore, in consideration of the promises and the covenants of this agreement, the parties hereto have agreed as follows:

1. That for a period of at least five years from and after the date hereof, the du Pont Company shall furnish to the Hercules Company, upon application by the latter company, all information and statistics from its trade bureau, including the statistical division, as it existed on December 31, 1912, as may be required by the Hercules Company, and the reasonable terms which the Hercules Company shall pay for this service shall be the actual cost to the du Pont Company of compiling and delivering such information to the Hercules Company.

2. It is expressly understood and agreed that the Hercules Company shall be entitled only to such information and statistics as is obtainable from said trade bureau, including the statistical division, as it existed on December 31, 1912, and not to any information or statistics accumulated in said bureau by the Du Pont Company after said date, and it is further understood and agreed that the Hercules Company shall not be required to make any reports of any kind or nature to the trade bureau, including the statistical division, maintained by the Du Pont Company.

3. This contract may be terminated by the Hercules Company upon giving the Du Pont Company three months' notice of its intention to terminate this contract, and upon the expiration of three months after the giving of such notice, this contract shall terminate and end, but unless notice to terminate is given by the

Hercules Company as last above provided, this contract shall continue and be in force for five years from and after the date hereof.

In witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

E. I. DU PONT DE NEMOURS
POWDER COMPANY,

By -----
HERCULES POWDER COMPANY,

By -----

We submit that Exhibit F, proposed agreement between the Du Pont Powder Company and the Atlas Powder Company, found on page 88 of defendants' compliance report, filed January 15, 1913, covering use by the Atlas Company of the trade bureau maintained by the Du Pont Company, be amended so as to read as follows:

EXHIBIT F.

This agreement, made this —— day of January, 1913, between E. I. du Pont de Nemours Powder Company, a corporation created under the laws of New Jersey, hereinafter called the "Du Pont Company", and Atlas Powder Company, a corporation created under the laws of Delaware, hereinafter called the "Atlas Company"; witnesseth:

Whereas, the Atlas Company has been created pursuant to decree of the District Court of the United States for the District of Delaware, entered in that certain suit in equity No. 280, in which United States of America is petitioner, and E. I. du Pont de Nemours & Company and others are defendants, in which decree it is provided that the Du Pont Company

shall during a period of at least five years furnish the Atlas Company, under such arrangement as may be reasonable, such information from the records of the trade bureau, including the statistical division, maintained by the Du Pont Company as may be desired; and

Whereas, the Du Pont Company and the Atlas Company have agreed that the information which the trade bureau, including the statistical division, maintained by the Du Pont Company shall furnish to the Atlas Powder Company, under this provision of the decree, shall be confined to the information and statistics found in said trade bureau, including the statistical division, as of December 31, 1912, and that any statistics or information accumulated in said bureau by the Du Pont Company, after December 31, 1912, shall not be available to the Atlas Company.

Therefore, in consideration of the promises and the covenants of this agreement, the parties hereto have agreed as follows:

1. That for a period of at least five years from and after the date hereof, the Du Pont Company shall furnish to the Atlas Company, upon application by the latter company, all information and statistics from its trade bureau, including the statistical division, as it existed on December 31, 1912, as may be required by the Atlas Company, and the reasonable terms which the Atlas Company shall pay for this service shall be the actual cost to the Du Pont Company of compiling and delivering such information to the Atlas Company.

2. It is expressly understood and agreed that the Atlas Company shall be entitled only to such information and statistics as is obtainable from said trade bureau, including the statistical division, as it existed on December 31, 1912, and not to any information or statistics accumulated in said bureau by the du Pont Company after said date, and it is further understood and agreed that the Atlas Company shall not be required to make any reports of any kind or nature to the trade bureau, including the statistical division, maintained by the du Pont Company.

3. This contract may be terminated by the Atlas Company upon giving the du Pont Company three months' notice of its intention to terminate this contract, and upon the expiration of three months after the giving of such notice, this contract shall terminate and end, but unless notice to terminate is given by the Atlas Company as last above provided, this contract shall continue and be in force for five years from and after the date hereof.

In witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

E. I. DU PONT DE NEMOURS
POWDER COMPANY,

By _____

ATLAS POWDER COMPANY,

By _____

All of which is respectfully submitted.

WM. S. HILLES,
GEO. S. GRAHAM,
J. P. LAFFEY,
Counsel for Defendants.

STATE OF DELAWARE,

County of New Castle, ss:

Hamilton M. Barksdale, being duly sworn according to law, doth depose and say: That he is vice president and general manager of E. I. du Pont de Nemours Powder Company, one of the defendants in the foregoing case; that he is duly authorized to make this affidavit, and that the matters and things set forth in the foregoing report are true and correct to his best knowledge and belief.

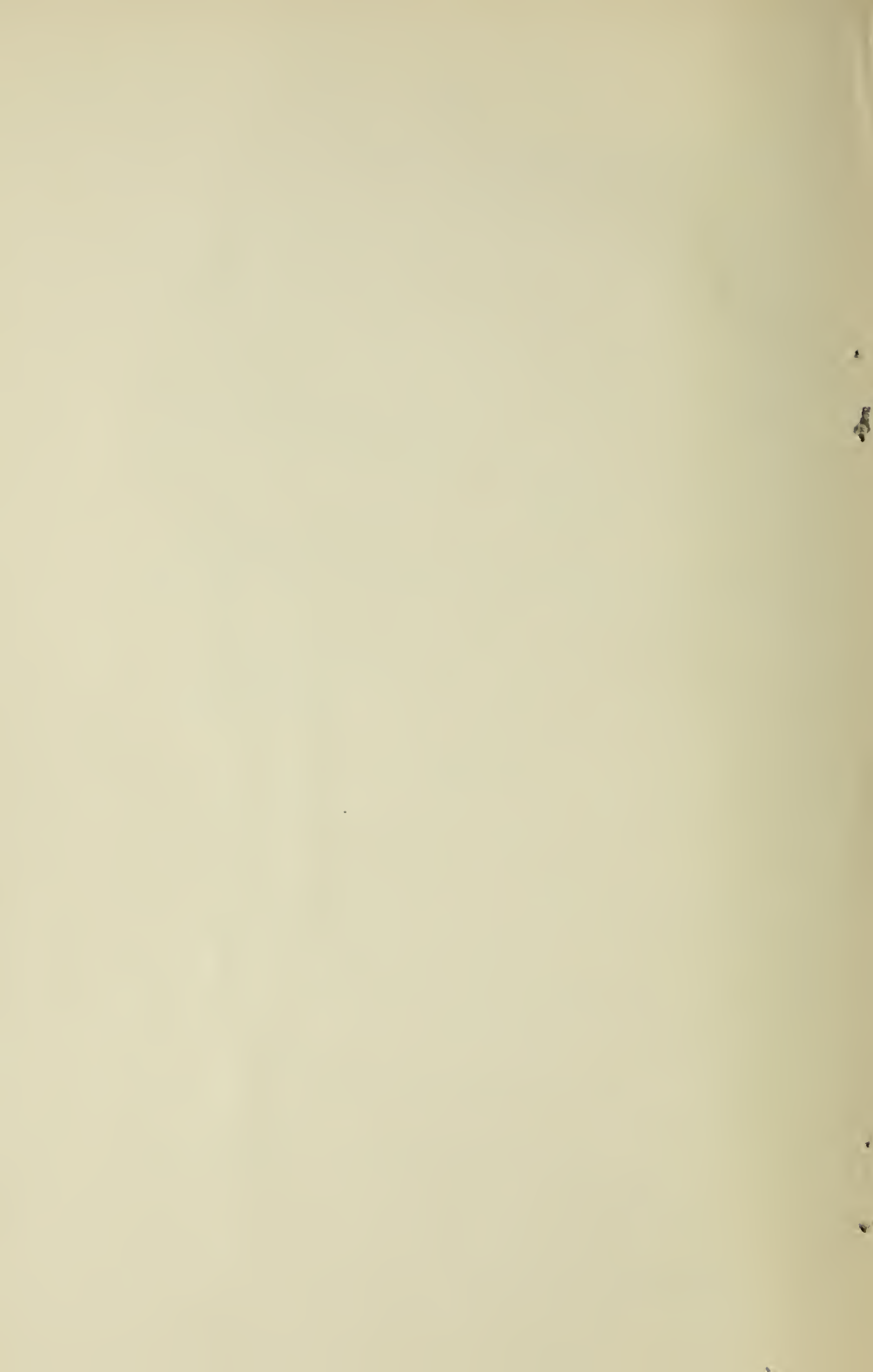
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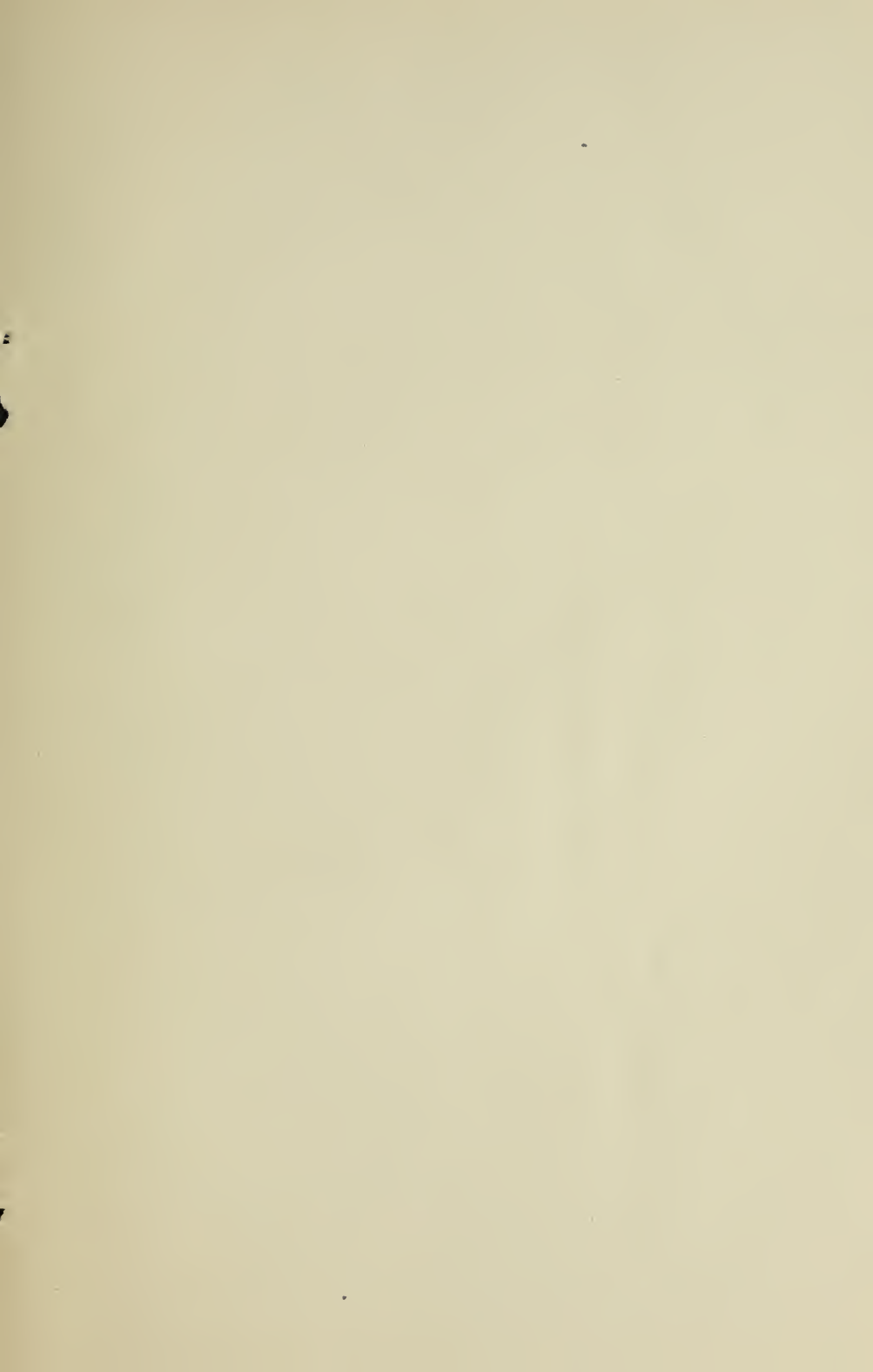
H. M. BARKSDALE.

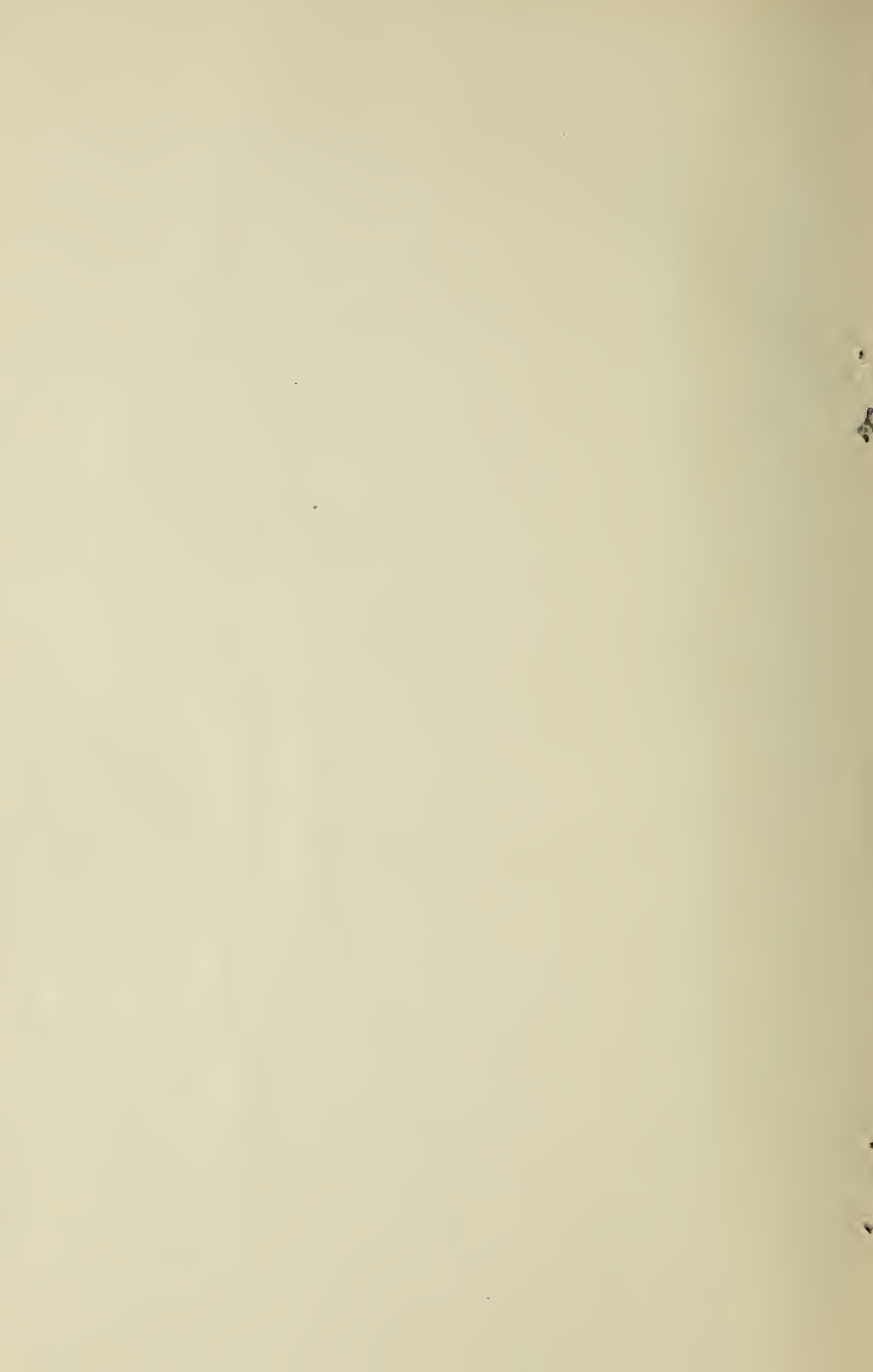
Subscribed and sworn to before me this 18th day of February, 1913.

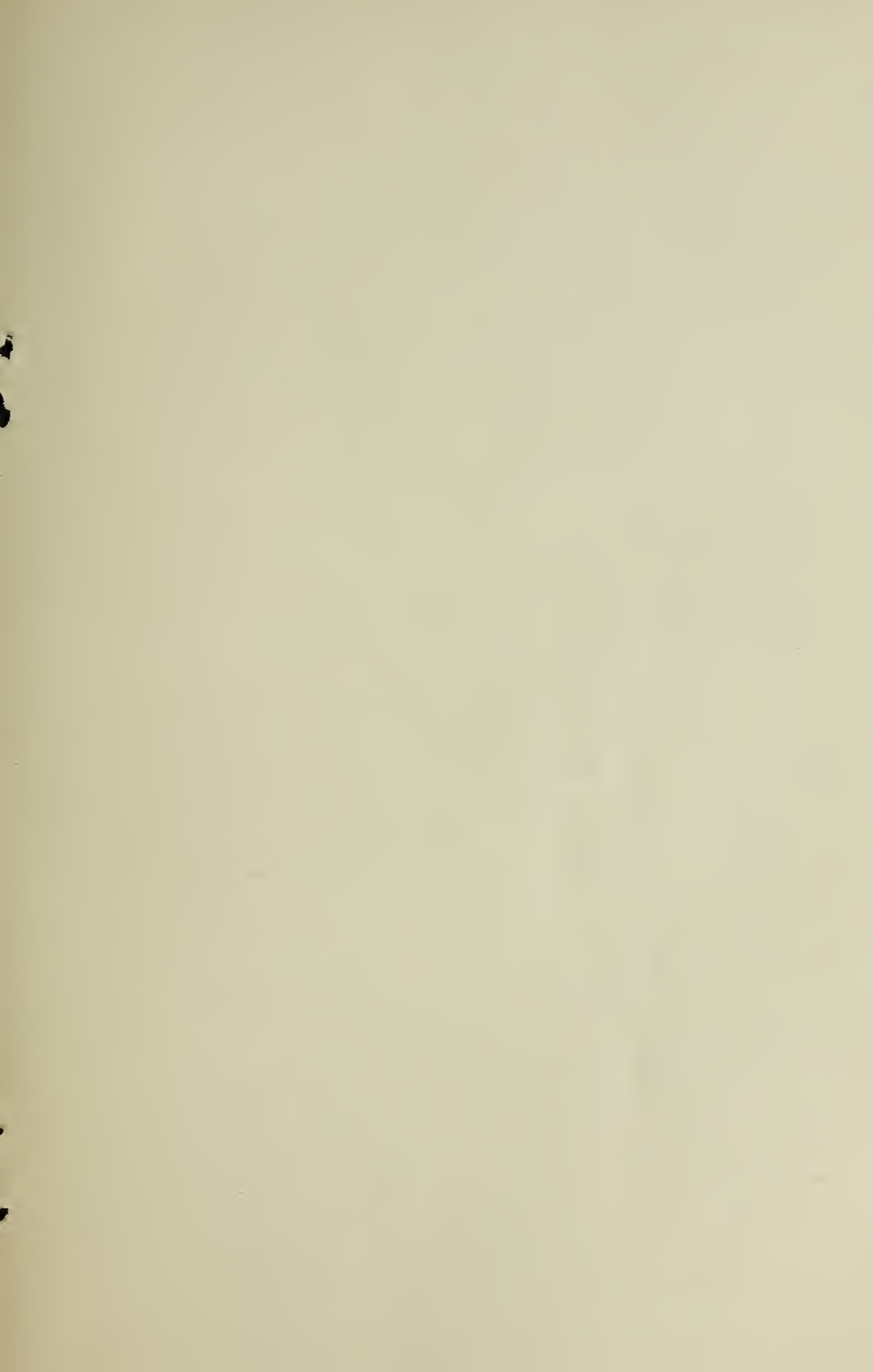
J. ED WILSON,
Notary Public.

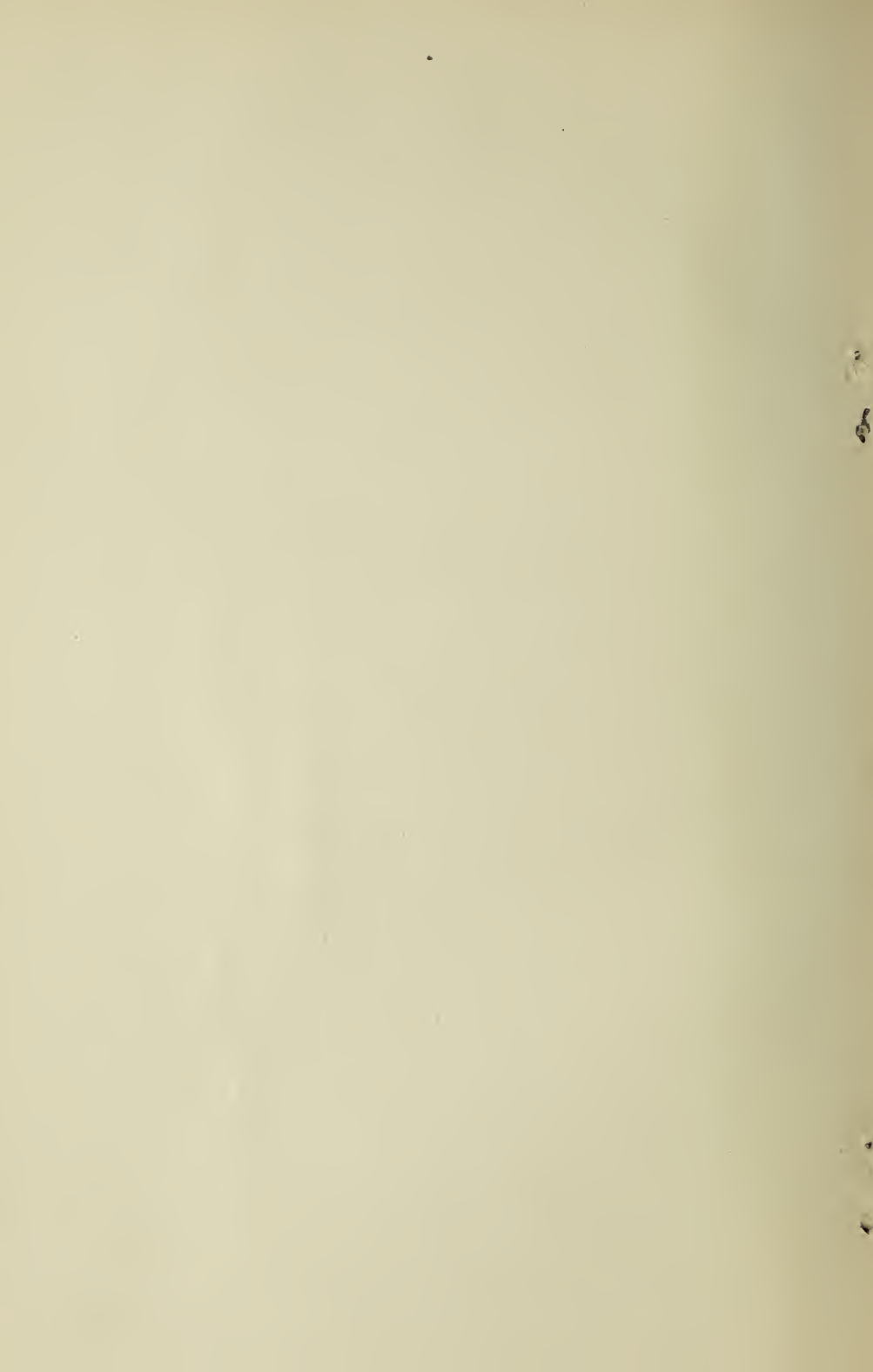
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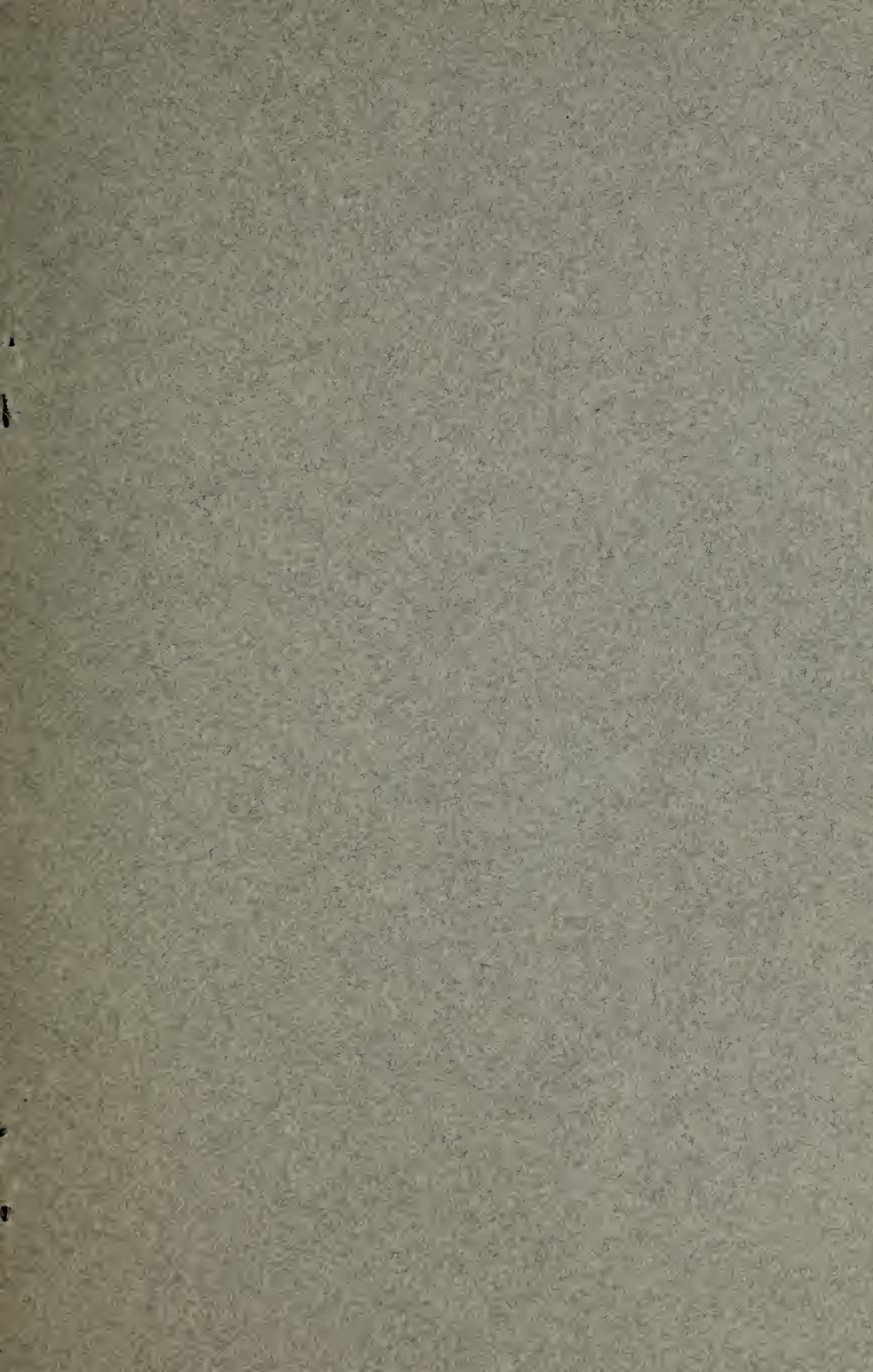














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